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SAN DIEGO SUPERIOR COURT  
SAN DIEGO COUNTY, CA

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10 California Department of Toxic Substances Control

11 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF SAN DIEGO**

13 PEOPLE OF THE STATE OF CALIFORNIA, )  
*ex rel.* Maureen F. Gorsen, Director, California )  
14 Department of Toxic Substances Control, )

Case No. **37-2007-00074954-CU-MC-CTL**

COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE  
RELIEF

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Plaintiff,

(Health and Safety Code sections  
25189 and 25189.2)

v.

18 KYOCERA AMERICA, INC., and )  
19 DOES 1-10, )

20 Defendants. )  
21 )  
22 )  
23 )  
24 )  
25 )  
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27 )  
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22 Plaintiff, the People of the State of California, ex rel. Maureen F. Gorsen, Director  
23 of the California Department of Toxic Substances Control alleges as follows:

24 **PRELIMINARY STATEMENT**

25 1. Plaintiff brings this action to address violations of the California Hazardous Waste  
26 Control Law ("HWCL"), California Health and Safety Code sections 25100 *et seq.*, and of  
27 certain regulations and requirements adopted and issued by Plaintiff pursuant to these state  
28 statutes.

No fee pursuant to Government Code  
Section 6103



1 10. When the names of these defendants have been ascertained, Plaintiff will seek leave to  
2 amend the Complaint to substitute the true name of each DOE defendant in place of the fictitious  
3 name. Unless otherwise alleged, each reference in this Complaint to “defendant” or “defendants”  
4 refers to all defendants named herein, including all defendants under fictitious names.

5 8. Plaintiff is informed and believes and thereon alleges that each defendant was the  
6 officer, agent, employee, or representative of each of the remaining defendants, acting within the  
7 course and scope of said agency, employment, or representation, and each defendant has ratified  
8 and approved the actions of each of the other defendants alleged herein. When, in this  
9 Complaint, reference is made to any act of defendants, such allegations shall be deemed to mean  
10 that the officers, directors, agents, employees, representatives of said defendants carried out, or  
11 authorized such acts, or recklessly or carelessly failed to adequately supervise, or control or direct  
12 their employees or agents while engaged in the management, direction, operation, or control of  
13 the affairs of said business or organization, and did so while acting within the course and scope  
14 of said employment or agency.

#### 15 **JURISDICTION AND VENUE**

16 9. The Superior Court has jurisdiction pursuant to Article VI, Section 10 of the  
17 California Constitution, and California Health and Safety Code section 25181.

18 10. Venue is proper in this Court pursuant to California Health and Safety Code  
19 section 25183, because San Diego County is the county in which the alleged violations of law  
20 occurred.

#### 21 **STATUTORY AND REGULATORY BACKGROUND**

22 11. The State of California has enacted a comprehensive statutory and regulatory  
23 framework for the generation, handling, treatment, transport and disposal of hazardous wastes.  
24 The framework contained in the HWCL, and its implementing regulations, mandate a “cradle to  
25 grave” registration, tracking, storage, treatment and disposal system for the protection of the  
26 public from the risks posed by hazardous wastes.

27 12. California administers the HWCL in lieu of federal administration of the federal  
28 Resource Conservation and Recovery Act (“RCRA”), which is codified at 42 United States Code

1 sections 6901 *et seq.*, pursuant to Health & Safety Code sections 25101(d) and 25159-25159.9.  
2 Federal law prohibits California from imposing any requirements less stringent than those  
3 authorized under RCRA. (42 U.S.C. § 6929.)

4 13. The HWCL charges the Department with the responsibility to adopt standards and  
5 regulations for the management of hazardous waste to protect the public health and environment.  
6 (Health & Saf. Code § 25150.) Accordingly, the Department has promulgated regulations setting  
7 forth numerous and extensive health-protective requirements for the day-to-day operation of  
8 hazardous waste generators, transporters, as well as owners and operators of hazardous waste  
9 facilities. (See Cal. Code. Regs., tit. 22, § 66262.1 *et seq.*)

10 14. Health and Safety Code section 25124(a) defines a “waste” [as] any solid, liquid,  
11 semisolid, or contained gaseous discarded material that is not excluded by this chapter or by  
12 regulations adopted pursuant to this chapter.” (See also Cal. Code. Regs., tit. 22, § 66261.2.)  
13 “Discarded materials” include any material that is relinquished, recycled or accumulated, stored,  
14 or treated before recycling except as provided in Section 25143.2, poses a threat to public health  
15 or the environment and is not timely and adequately labeled or not timely packaged in an  
16 adequate container, or is considered inherently wastelike, as specified in regulations adopted by  
17 the Department. (Health & Saf. Code § 25124(b).) A “waste” includes “spent material” that has  
18 been used and as a result of contamination can no longer serve the purpose for which it was  
19 produced without processing. (Cal. Code. Regs., tit. 22, § 66260.10.)

20 15. A “hazardous waste” is a waste that meets any of the criteria established by the  
21 Department. (Health & Saf. Code §§ 25117 and 25141.) Those criteria consist of lists of  
22 particular hazardous wastes, and characteristics of hazardous wastes.

23 16. The HWCL has a more inclusive definition of “hazardous waste” than does  
24 federal law. Hazardous wastes that are regulated under California law but not federal law are  
25 known as “non-RCRA hazardous wastes.” (Health & Saf. Code § 25117.9.)

26 17. The HWCL, at Health and Safety Code section 25201(a), provides that an owner  
27 or operator of a hazardous waste management facility may not “accept, treat, store, or dispose of  
28 a hazardous waste at the facility, area, or site, unless the owner or operator holds a hazardous

1 waste facilities permit or other grant of authorization from the Department to use and operate the  
2 facility, area, or site . . . .”

3 18. A generator of hazardous waste may accumulate that hazardous waste  
4 onsite for up to ninety (90) days without authorization provided that the generator complies with  
5 certain requirements, including, but not limited to, the requirements specified in California Code  
6 of Regulations, title 22, section 66262.34. (Health & Saf. Code § 25123.3(b).)

7 19. A person that generates a waste must determine if the waste is hazardous  
8 using the methods outlined in California Code of Regulations, title 22, sections 66262.11, and  
9 66260.200. If the waste is hazardous, the generator must manage it in accordance with the  
10 regulations governing generators of hazardous wastes. (See Cal. Code. Regs., tit. 22, §§  
11 66262.11(d) and 66260.200(c).)

12 20. A person who generates a hazardous waste is subject to the compliance  
13 requirements and penalties prescribed in chapter 6.5 of division 20 of the Health and Safety Code  
14 (commencing with section 25100) if the generator does not comply with the requirements  
15 applicable to generators of hazardous waste. A generator who treats, stores, or disposes of  
16 hazardous waste on-site shall also comply with the applicable standards and permit requirements  
17 set forth in chapters 14, 15, 16, 18 and 20 of division 4.5, California Code of Regulations, title  
18 22, section 66260.1 *et seq.* (Cal. Code. Regs., tit. 22, § 66262.10.)

19 **ENFORCEMENT AUTHORITY UNDER THE HWCL**

20 21. The HWCL authorizes the Court to impose civil penalties under two distinct and  
21 alternative provisions. Section 25189 of the Health and Safety Code creates liability for any  
22 negligent or intentional violation of the HWCL. Section 25189.2 is a strict liability provision,  
23 which creates liability for any violation of the HWCL. A person may not be held liable for a  
24 civil penalty imposed under section 25189 and for a civil penalty imposed under section 25189.2  
25 for the same act. (Health & Saf. Code § 25189.2(d).)

26 22. The HWCL, sections 25181 and 25184, authorize and direct the Court to enjoin  
27 any ongoing or potential violation of the HWCL.

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1           23.     Section 25181 of the Health and Safety Code provides that when the Department  
2 determines that any person has engaged in, is engaged in, or is about to engage in any acts or  
3 practices which constitute or will constitute a violation of any provision of the HWCL or any rule  
4 or requirement issued or promulgated thereunder, and when requested by the Department, the  
5 Attorney General may make application to the superior court for an order enjoining such acts or  
6 practices, or for an order directing compliance, and upon a showing by the Department that such  
7 person has engaged in or is about to engage in any such acts or practices, a permanent or  
8 temporary injunction, restraining order, or other order may be granted.

9           24.     Health and Safety Code section 25184 provides that in civil actions brought  
10 pursuant to the HWCL in which an injunction or temporary restraining order is sought:

11           “It shall not be necessary to allege or prove at any stage of the proceeding that irreparable  
12 damage will occur should the temporary restraining order, preliminary injunction, or  
13 permanent injunction not be issued; or that the remedy at law is inadequate, and the  
14 temporary restraining order, preliminary injunction, or permanent injunction shall issue  
15 without such allegations and without such proof.”

16                                   **GENERAL ALLEGATIONS**

17           25.     At all times relevant herein, defendants owned and/or operated a manufacturing  
18 and electroplating facility located at 8611 Balboa Avenue, San Diego, California (“Facility”).  
19 Defendants design, manufacture, and assemble a broad range of microelectronic parts for the  
20 telecommunications and semiconductor markets. Defendants generate hazardous wastes  
21 including, but not limited to, the following: wastewater containing metals (copper, nickel, silver,  
22 and gold), cyanide plating and stripping wastes, metal hydroxide sludge, spent cyanide and nickel  
23 filters, acids, caustics and non-halogenated solvents. Prior to 1999, defendants were authorized  
24 by the San Diego County Department of Environmental Health, Hazardous Materials Division,  
25 Certified Unified Program Agency (“CUPA”), to operate a Fixed Treatment Unit (“FTU”) to  
26 conduct heavy metals removal and wastewater treatment.

27           26.     Between October 16, 2003, through October 17, 2003, and June 21, 2005, through  
28 June 28, 2005, representatives of the Department conducted on-site inspections of defendants’

1 Facility for compliance with the HWCL. The Department's representatives discovered violations  
2 of the HWCL at defendants' Facility. At the conclusion of the inspections, the Department  
3 provided defendants with a summary of violations. The Department subsequently provided  
4 defendants with detailed inspection reports indicating the Department's findings for both  
5 inspections. Department representatives also conducted follow-up meetings with defendants at  
6 the Facility between December 2006 and January 2007.

7 27. The Department has incurred investigation costs to determine whether defendants  
8 have been in compliance with the State's hazardous waste laws and regulations. The Department  
9 has expended and will continue to expend State funds for such costs of investigation in order to  
10 determine whether defendants are in compliance with the State's hazardous waste laws and  
11 regulations and whether defendants are complying with any temporary restraining order or  
12 preliminary or permanent injunction issued by the Court.

13 **FIRST CAUSE OF ACTION**

14 (Illegal Treatment of Hazardous Waste)

15 28. Paragraphs 1 through 27 above are incorporated by reference as though fully set  
16 forth herein.

17 29. In relevant part, Health and Safety Code section 25201 provides that no owner or  
18 operator of a storage facility, treatment facility, transfer facility, resource recovery facility, or  
19 disposal site shall treat a hazardous waste at the facility, area, or site, unless the owner or  
20 operator holds a hazardous waste facilities permit or other authorization from the Department.

21 30. Health and Safety Code section 25123.5 defines "treatment" of a hazardous waste  
22 as any method, technique or process designed to change the physical, chemical, or biological  
23 character or composition of the hazardous waste.

24 31. Beginning on an undetermined date prior to October 16, 2003, and continuing  
25 through at least June 2005, defendants treated the following hazardous wastes without a permit  
26 or other authorization from the Department, at the Facility in violation of Health and Safety Code  
27 section 25201:

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1 (a) Spent cyanide plating bath solutions from electroplating operations, a RCRA  
2 listed hazardous waste (F007);

3 (b) Spent stripping and cleaning bath solutions from electroplating operations where  
4 cyanides are used in the process, a RCRA listed hazardous waste (F009);

5 (c) Spent rinse wastewater containing cyanide;

6 (d) Metal hydroxide sludge, a RCRA listed hazardous waste (F006), treated in a dryer  
7 via cold evaporation; and

8 (e) Rinsing and crushing of 55-gallon containers of hazardous materials and/or  
9 hazardous waste.

10 32. Pursuant to Health and Safety Code section 25189(b), defendants are liable for  
11 civil penalties according to proof based on this intentional or negligent violation. In the  
12 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health  
13 and Safety Code section 25189.2.

## 14 **SECOND CAUSE OF ACTION**

### 15 (Failure to Make a Hazardous Waste Determination)

16 33. Paragraphs 1 through 27 above are incorporated by reference as though fully set  
17 forth herein.

18 34. In relevant part, California Code of Regulations, title 22, section 66262.11(b)  
19 provides that a generator who generates a waste shall determine if the waste is listed as a  
20 hazardous waste in division 4.5, chapter 11, articles 4 or 4.1, or in Appendix X of chapter 11. If  
21 the waste is listed in Appendix X and is not listed in articles 4 or 4.1 of chapter 11, the generator  
22 may determine that the waste from his particular facility or operation is not a hazardous waste by  
23 either: (1) testing the waste according to the methods set forth in article 3 of chapter 11, or  
24 according to an equivalent method approved by the Department pursuant to section 66260.21; or  
25 (2) applying knowledge of the hazard characteristic of the waste in light of the materials or the  
26 processes used and the characteristics set forth in article 3 of chapter 11.

27 35. In relevant part, California Code of Regulations, title 22, section 66262.11(c)  
28 provides that if the waste is not listed as a hazardous waste in article 4, article 4.1, or in



1 Appendix X of chapter 11, the generator shall determine whether the waste exhibits any of the  
2 characteristics set forth in article 3 of chapter 11 by either: (1) testing the waste according to the  
3 methods set forth in article 3 of chapter 11, or according to an equivalent method approved by the  
4 Department under section 66260.21; or (2) applying knowledge of the hazard characteristic of the  
5 waste in light of the materials or the processes used.

6 36. Beginning on an undetermined date prior to prior to October 16, 2003, and  
7 continuing through at least October 16, 2003, defendants failed to make a hazardous waste  
8 determination for the following wastes in violation of California Code of Regulations, title 22,  
9 section 66262.11(b) and section 66262.11(c):

10 (a) Spent sodium cyanide waste with sodium hydroxide used for stripping, a RCRA  
11 listed hazardous waste (F009), that was improperly identified as corrosive waste "D002" and  
12 shipped offsite for disposal;

13 (b) Spent potassium "ferric cyanide" waste used for stripping operations, a RCRA  
14 listed hazardous waste (F009), that was improperly identified as "ferro cyanide" and corrosive  
15 waste "D002" and shipped offsite;

16 (c) Spent cyanide filters, a RCRA listed hazardous waste (F006), that were managed  
17 as non-RCRA waste with California waste code "711," and located by the compactor, a generator  
18 area; and

19 (d) Spent Enstrip (trade name), a cyanide waste used for stripping of parts and racks  
20 and a RCRA listed hazardous waste (F009).

21 37. Pursuant to Health and Safety Code section 25189(b), defendants are liable for  
22 civil penalties according to proof based on this intentional or negligent violation. In the  
23 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health  
24 and Safety Code section 25189.2.

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1 **THIRD CAUSE OF ACTION**

2 (Failure to Assess Whether Hazardous Wastes Were Subject to

3 Land Disposal Restrictions and Whether Applicable Treatment Standards Applied)

4 38. Paragraphs 1 through 27 above are incorporated by reference as though fully set  
5 forth herein.

6 39. In relevant part, Health and Safety Code section 25179.5(a) provides that any  
7 hazardous waste restricted from land disposal by the federal act, or by the Environmental  
8 Protection Agency pursuant to the federal act, or by the Department pursuant to Section 25179.6,  
9 is prohibited from land disposal in the state, unless one of four specified circumstances apply,  
10 including that the waste is treated in accordance with an applicable treatment standard before  
11 land disposal. Health and Safety Code section 25179.5(b)(1) further provides that “[a]ny  
12 treatment standard that is adopted or amended by the Environmental Protection Agency pursuant  
13 to subsection (m) of Section 6924 of the federal act, for a hazardous waste prohibited from land  
14 disposal pursuant to subdivision (a) and that is in effect, is the treatment standard required to be  
15 met before the hazardous waste may be disposed of, using land disposal, in the state. Any land  
16 disposal restriction, including any treatment standard, notification requirement, or recordkeeping  
17 requirement that is adopted or amended by the Environmental Protection Agency shall become  
18 effective in the state upon the effective date of that adoption or amendment, as specified in the  
19 final rule published in the Federal Register, and shall, as of that date, supersede any  
20 corresponding land disposal restriction specified in the department's regulations, unless one or  
21 more of the following conditions exist: (A) A more stringent statutory requirement is applicable.  
22 (B) A land disposal restriction previously adopted by the department expressly states, in that  
23 regulation, that the land disposal restriction is intended to supersede any less stringent land  
24 disposal restrictions which may be subsequently adopted by the Environmental Protection  
25 agency. (C) The department subsequently adopts a more stringent land disposal restriction  
26 pursuant to subdivision (c) of Section 25179.6.”

27 40. In relevant part, California Code of Regulations, title 22, section 66268.1(f)  
28 provides that “[e]ffective May 8, 1990, all hazardous wastes are prohibited from land disposal

1 unless the wastes have been exempted, granted a variance or granted an extension under this  
2 chapter or pursuant to California Health and Safety Code sections 25179.8, 25179.9, 25179.10,  
3 25179.11 and 25179.12, unless the wastes meet the applicable treatment standards specified  
4 under article 4 and article 11 of this chapter, or 40 CFR part 268 or unless the wastes have a  
5 treatment standard that has been repealed pursuant to Health and Safety Code section 25179.6.”

6 41. In relevant part, California Code of Regulations, title 22, section 66268.7(a)(1)  
7 provides that “. . . a generator of hazardous waste shall determine if the waste has to be treated  
8 before it can be land disposed. This is done by determining if the hazardous waste meets the  
9 treatment standards in article 4 or article 11. This determination can be made in either of two  
10 ways: testing the waste or using knowledge of the waste . . . ”

11 42. Beginning on an undetermined date prior to prior to October 16, 2003, and  
12 continuing through at least May 2005, defendants failed to assess whether the following  
13 hazardous wastes were subject to land disposal restrictions and/or whether applicable treatment  
14 standards applied, in violation of Health and Safety Code section 25179.5 and California Code of  
15 Regulations, title 22, section 66268.1 and section 66268.7(a)(1):

16 (a) Spent sodium cyanide waste with sodium hydroxide used for stripping, a RCRA  
17 listed waste (F009), was identified as corrosive waste “D002” and shipped offsite for disposal;

18 (b) Spent potassium “ferric cyanide” waste used for stripping operations, a RCRA  
19 listed waste (F009), was identified as corrosive “ferro cyanide,” another RCRA listed waste  
20 (D002), and also identified as California waste code “122.”

21 (c) Spent cyanide filters, a RCRA listed waste (F008), were managed as non-RCRA  
22 waste and identified as California waste (711).

23 (d) Metal hydroxide sludge, a RCRA listed hazardous waste (F006), was shipped to  
24 World Resources Company for recycling and the hazardous waste did not meet the LDR  
25 standards for F006.

26 43. Pursuant to Health and Safety Code section 25189(b), defendants are liable for  
27 civil penalties according to proof based on this intentional or negligent violation. In the

28 ///

1 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health  
2 and Safety Code section 25189.2.

3 **FOURTH CAUSE OF ACTION**

4 (Illegal Storage of Hazardous Wastes)

5 44. Paragraphs 1 through 27 above are incorporated by reference as though fully set  
6 forth herein.

7 45. In relevant part, Health and Safety Code section 25201 provides that no owner or  
8 operator of a storage facility, treatment facility, transfer facility, resource recovery facility, or  
9 disposal site shall store a hazardous waste at the facility, area, or site, unless the owner or  
10 operator holds a hazardous waste facilities permit or other authorization from the Department.

11 46. In relevant part, California Code of Regulations, title 22, section 66262.34(a)  
12 provides that a generator may accumulate hazardous waste on-site for 90 days or less without a  
13 permit or grant of interim status, provided that the generator complies with certain requirements,  
14 including, but not limited to, the requirements specified in California Code of Regulations, title  
15 22, section 66262.34.

16 47. On or about October 16, 2003, defendants stored the following hazardous wastes  
17 at the Facility for more than 90 days without obtaining a required hazardous waste storage permit  
18 or other authorization from the Department in violation of Health and Safety Code section 25201  
19 and California Code of Regulations, title 22, section 66262.34(a):

20 (a) Spent methanol was first accumulated in a 55-gallon containers for 90 days and  
21 then pumped into a 275-gallon tank that was then marked with a new date of accumulation. The  
22 initial date of accumulation on the containers was June 23, 2003 and the initial date of  
23 accumulation on the 275-gallon tank was marked October 10, 2003. A manifest review indicated  
24 that the spent methanol had been shipped offsite for disposal as a RCRA listed waste (F003).

25 (b) Four (4), 55-gallon containers with spent methanol were stored at the Facility with  
26 March 2, 2003 as the initial date of accumulation.

27 (c) Three (3), 55-gallon containers with spent methanol were stored at the Facility  
28 with May 1, 2003 as the initial date of accumulation.

(d) One (1), 55-gallon container with used oil was stored at the Facility with February 27, 2003 as the initial date of accumulation.

48. Pursuant to Health and Safety Code section 25189(b), defendants are liable for civil penalties according to proof based on this intentional or negligent violation. In the alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health and Safety Code section 25189.2.

#### **FIFTH CAUSE OF ACTION**

##### **(Illegal Storage of Hazardous Wastes)**

49. Paragraphs 1 through 27 above are incorporated by reference as though fully set forth herein.

50. In relevant part, Health and Safety Code section 25201 provides that no owner or operator of a storage facility, treatment facility, transfer facility, resource recovery facility, or disposal site shall store a hazardous waste at the facility, area, or site, unless the owner or operator holds a hazardous waste facilities permit or other authorization from the Department.

51. In relevant part, California Code of Regulations, title 22, section 66262.34(a) provides that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or grant of interim status, provided that the generator complies with certain requirements, including, but not limited to, the requirements specified in California Code of Regulations, title 22, section 66262.34.

52. On or about June 21, 2005, defendants stored the following hazardous wastes at the Facility for more than 90 days without obtaining a required hazardous waste storage permit or other authorization from the Department in violation of Health and Safety Code section 25201 and California Code of Regulations, title 22, section 66262.34(a):

(a) One (1), 55-gallon, blue, poly container with cyanide hazardous waste located in the North Reclaim room and marked with November 8, 2004 as the initial date of accumulation and labeled "From rack stripping to Ionet, 4 Hot water."

(b) Metal hydroxide sludge, a RCRA listed waste code (F006), was stored beyond 90 days on five occasions during 2003, 2004, and 2005, as per defendants' hazardous waste

1 manifests, numbers 99694524, 99694526, 99694525, 22831554, 23609843, 23609847, and  
2 23609846.

3 53. Pursuant to Health and Safety Code section 25189(b), defendants are liable for  
4 civil penalties according to proof based on this intentional or negligent violation. In the  
5 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health  
6 and Safety Code section 25189.2.

7 **SIXTH CAUSE OF ACTION**

8 (Failure to Properly Label Hazardous Waste Containers as "Hazardous Waste")

9 54. Paragraphs 1 through 27 are incorporated by reference herein as though fully set  
10 forth herein.

11 55. In relevant part, California Code of Regulations, title 22, section 66262.34(f)  
12 provides that generators who accumulate hazardous waste on site without a permit or grant of  
13 interim status shall comply with the Department's labeling requirements as set forth in said  
14 regulation. Section 66262.34(f) further provides that generators who accumulate hazardous  
15 waste on site without a permit or grant of interim status shall comply with the following  
16 requirements: (1) the date upon which each period of accumulation begins shall be clearly  
17 marked and visible for inspection on each container and portable tank; (2) the date the applicable  
18 accumulation period specified in subsection (a) or (d) of this section begins, for purposes of  
19 subsections (a) and (b) of this section, shall be clearly marked and visible for inspection on each  
20 container and tank; and (3) each container and tank used for onsite accumulation of hazardous  
21 waste shall be labeled or marked clearly with the words, "Hazardous Waste." Additionally, all  
22 containers and portable tanks shall be labeled with the following information: (A) composition  
23 and physical state of the wastes; (B) statement or statements which call attention to the particular  
24 hazardous properties of the waste (e.g., flammable, reactive, etc.); (C) name and address of the  
25 person producing the waste.

26 56. Beginning on an undetermined date prior to October 16, 2003, and continuing  
27 through at least October 17, 2003, defendants failed to properly label approximately fifty (50),  
28 55-gallon containers and tanks with spent aqueous waste containing cyanide with the words

1 "hazardous waste" and failed to identify on the labels the hazardous properties and composition  
2 of the wastes in violation of California Code of Regulations, title 22, section 66262.34(f). These  
3 containers and tanks were located in the Facility's manual plating room, gold recovery room  
4 (North Reclaim room), the generator area, and the Chem pad area, and were improperly labeled  
5 as "Excluded Recyclable Material."

6 57. Pursuant to Health and Safety Code section 25189(b), defendants are liable for  
7 civil penalties according to proof based on this intentional or negligent violation. In the  
8 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health  
9 and Safety Code section 25189.2.

#### 10 **SEVENTH CAUSE OF ACTION**

11 (Failure to Properly Label Hazardous Waste Containers as "Hazardous Waste")

12 58. Paragraphs 1 through 27 are incorporated by reference herein as though fully set  
13 forth herein.

14 59. In relevant part, California Code of Regulations, title 22, section 66262.34(f)  
15 provides that generators who accumulate hazardous waste on site without a permit or grant of  
16 interim status shall comply with the Department's labeling requirements as set forth in said  
17 regulation. Section 66262.34(f) further provides that generators who accumulate hazardous  
18 waste on site without a permit or grant of interim status shall comply with the following  
19 requirements: (1) the date upon which each period of accumulation begins shall be clearly  
20 marked and visible for inspection on each container and portable tank; (2) the date the applicable  
21 accumulation period specified in subsection (a) or (d) of this section begins, for purposes of  
22 subsections (a) and (b) of this section, shall be clearly marked and visible for inspection on each  
23 container and tank; and (3) each container and tank used for onsite accumulation of hazardous  
24 waste shall be labeled or marked clearly with the words, "Hazardous Waste." Additionally, all  
25 containers and portable tanks shall be labeled with the following information: (A) composition  
26 and physical state of the wastes; (B) statement or statements which call attention to the particular  
27 hazardous properties of the waste (e.g., flammable, reactive, etc.); (C) name and address of the  
28 person producing the waste.

1           60.     Beginning on an undetermined date prior to June 21, 2005, and continuing  
2 through at least June 21, 2005, defendants failed to properly label approximately twenty-eight  
3 (28), 55-gallon hazardous waste containers, two (2) portable tanks with hazardous waste, and one  
4 hopper containing metal hydroxide sludge, with the words "hazardous waste" and failed to  
5 identify on the labels the hazardous properties and composition of the wastes in violation of  
6 California Code of Regulations, title 22, section 66262.34(f). These containers and tanks were  
7 located in the Facility's manual plating room, gold recovery room (North Reclaim room), the  
8 generator area, and the Chem pad area, and were improperly labeled as "Excluded Recyclable  
9 Material."

10           61.     Pursuant to Health and Safety Code section 25189(b), defendants are liable for  
11 civil penalties according to proof based on this intentional or negligent violation. In the  
12 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health  
13 and Safety Code section 25189.2.

14                                   **EIGHTH CAUSE OF ACTION**

15                                   (Failure to Comply with Documentation Requirements)

16                                   Applicable to Conditionally Exempt Recyclable Hazardous Wastes)

17           62.     Paragraphs 1 through 27 are incorporated by reference herein as though fully set  
18 forth herein.

19           63.     In relevant part, Health and Safety Code section 25143.2(f) provides that "(1) Any  
20 person who manages a recyclable material under a claim that the material qualifies for exclusion  
21 or exemption pursuant to this section shall provide, upon request, to the department, the  
22 California Environmental Protection Agency, or any local agency or official authorized to bring  
23 an action as provided in Section 25180, all of the following information: (A) The name, street  
24 and mailing address, and telephone number of the owner or operator of any facility that manages  
25 the material. (B) Any other information related to the management by that person of the material  
26 requested by the department, the California Environmental Protection Agency, or the authorized  
27 local agency or official. (2) Any person claiming an exclusion or an exemption pursuant to this  
28 section shall maintain adequate records to demonstrate to the satisfaction of the requesting



1 agency or official that there is a known market or disposition for the material, and that the  
2 requirements of any exemption or exclusion pursuant to this section are met. (3) For purposes of  
3 determining that the conditions for exclusion from classification as a waste pursuant to this  
4 section are met, any person, facility, site, or vehicle engaged in the management of a material  
5 under a claim that the material is excluded from classification as a waste pursuant to this section  
6 is subject to Section 25185.”

7         64. In relevant part, Health and Safety Code section 25143.10(a) provides that  
8 “[e]xcept as provided in subdivisions (e) and (f), any person who recycles more than 100  
9 kilograms per month of recyclable material under a claim that the material qualifies for exclusion  
10 or exemption pursuant to Section 25143.2 shall, on or before July 1, 1992, and every two years  
11 thereafter, provide to the local officer or agency authorized to enforce this section pursuant to  
12 subdivision (a) of Section 25180, all of the following information, using the format established  
13 pursuant to subdivision (d), in writing: (1) The name, site address, mailing address, and  
14 telephone number of the owner or operator of any facility that recycles the material. (2) The  
15 name and address of the generator of the recyclable material. (3) Documentation that the  
16 requirements of any exemptions or exclusions pursuant to Section 25143.2 are met, including,  
17 but not limited to, all of the following: (A) Where a person who recycles the material is not the  
18 same person who generated the recyclable material, documentation that there is a known market  
19 for disposition of the recyclable material and any products manufactured from the recyclable  
20 material. (B) Where the basis for the exclusion is that the recyclable material is used or reused to  
21 make a product or as a safe and effective substitute for a commercial product, a general  
22 description of the material and products, identification of the constituents or group of  
23 constituents, and their approximate concentrations, that would render the material or product  
24 hazardous under the regulations adopted pursuant to Sections 25140 and 25141, if it were a  
25 waste, and the means by which the material is beneficially used.”

26         65. In relevant part, California Code of Regulations, title 22, section 66262.34(f)  
27 provides that generators who accumulate hazardous waste on site without a permit or grant of  
28 interim status shall comply with the Department’s labeling requirements as set forth in said

1 regulation. Section 66262.34(f) further provides that generators who accumulate hazardous  
2 waste on site without a permit or grant of interim status shall comply with the following  
3 requirements: (1) the date upon which each period of accumulation begins shall be clearly  
4 marked and visible for inspection on each container and portable tank; (2) the date the applicable  
5 accumulation period specified in subsection (a) or (d) of this section begins, for purposes of  
6 subsections (a) and (b) of this section, shall be clearly marked and visible for inspection on each  
7 container and tank; and (3) each container and tank used for onsite accumulation of hazardous  
8 waste shall be labeled or marked clearly with the words, "Hazardous Waste." Additionally, all  
9 containers and portable tanks shall be labeled with the following information: (A) composition  
10 and physical state of the wastes; (B) statement or statements which call attention to the particular  
11 hazardous properties of the waste (e.g., flammable, reactive, etc.); (C) name and address of the  
12 person producing the waste.

13 66. Beginning on an undetermined date prior to October 16, 2003, and continuing  
14 through at least October 17, 2003, defendants, with regard to the following hazardous wastes,  
15 failed to comply with the documentation requirements applicable to conditionally exempt  
16 recyclable hazardous wastes in violation of Health and Safety Code sections 25143.2(f) and  
17 25143.10(a), and California Code of Regulations, title 22, section 66262.34(f): Approximately  
18 fifty (50), 55-gallon containers and tanks with spent aqueous waste containing cyanide that were  
19 located in the Facility's manual plating room, gold recovery room (North Reclaim room), the  
20 generator area, and the Chem pad area, and that were improperly labeled as "Excluded  
21 Recyclable Material."

22 67. Pursuant to Health and Safety Code section 25189(b), defendants are liable for  
23 civil penalties according to proof based on this intentional or negligent violation. In the  
24 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health  
25 and Safety Code section 25189.2.

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1 **NINTH CAUSE OF ACTION**

2 (Failure to Obtain Assessment by Certified Engineer for

3 Existing Hazardous Waste Treatment Tank)

4 68. Paragraphs 1 through 27 above are incorporated by reference as though fully set  
5 forth herein.

6 69. In relevant part, California Code of Regulations, title 22, section 66260.10 defines  
7 "tank system" as "a hazardous waste transfer, storage or treatment tank and its associated  
8 ancillary equipment and containment system."

9 70. In relevant part, California Code of Regulations, title 22, section 66260.10 defines  
10 "component" as "any constituent part of a unit or any group of constituent parts of a unit which  
11 are assembled to perform a specific function (e.g., a tank or ancillary equipment of a tank system,  
12 a pump seal, pump, kiln liner, kiln thermocouple)."

13 71. In relevant part, California Code of Regulations, title 22, section 66265.191(a)  
14 and (b) provides that "[f]or each existing tank system that does not have secondary containment  
15 meeting the requirements of section 66265.193, the owner or operator shall determine that the  
16 tank system is not leaking or is unfit for use. Except as provided in subsections (c) and (e) of this  
17 section, the owner or operator shall obtain and keep on file at the facility a written assessment  
18 reviewed and certified by an independent, qualified, professional engineer, registered in  
19 California, in accordance with section 66270.11(d), that attests to the tank system's integrity.

20 (b) This assessment shall determine that the tank system is adequately designed and has sufficient  
21 structural strength and compatibility with the waste(s) to be transferred, stored or treated to  
22 ensure that it will not collapse, rupture, or fail. At a minimum, this assessment shall consider the  
23 following: (1) design standard(s), if available, according to which the tank and ancillary  
24 equipment were constructed; (2) hazardous characteristics of the waste(s) that have been or will  
25 be handled; (3) existing corrosion protection measures; (4) documented age of the tank system, if  
26 available, (otherwise, an estimate of the age); and (5) results of a leak test, internal inspection, or  
27 other tank integrity examination such that: (A) for non-enterable underground tanks, this  
28 assessment shall consist of a leak test that is capable of taking into account the effects of

1 temperature variations, tank end deflection, vapor pockets, and high water table effects,  
2 (B) for other than non-enterable underground tanks and for ancillary equipment, this assessment  
3 shall be either a leak test, as described above, or an internal inspection and/or other tank integrity  
4 examination certified by an independent, qualified, professional engineer, registered in  
5 California, in accordance with section 66270.11(d) that addresses cracks, leaks, corrosion, and  
6 erosion."

7 72. Beginning on an undetermined date prior to October 16, 2003, and continuing  
8 through at least June 2005, defendants failed to obtain a written assessment for the following  
9 hazardous waste treatment tanks certified by an independent, qualified engineer registered in  
10 California in violation of California Code of Regulations, title 22, section 66265.191:

11 (a) Three (3) cyanide waste accumulation tanks, SP-10, SP-12, and SP-14 (85-gallons  
12 each), marked as cyanide wastes in the plating area.

13 (b) One (1) opaque white, poly, cyanide waste accumulation tank, #SP-16  
14 (85-gallons), marked as "CYANIDE WASTE", located in the Acid Cleaning room behind the  
15 eyewash/shower;

16 (c) One (1) opaque white, poly, 200-gallon cyanide waste accumulation tank, #SP-23,  
17 unmarked, in the Manual Plating room;

18 (d) Two (2) opaque white, poly, cyanide waste accumulation tanks, #SP-25, #SP-27  
19 (200 gallons each), each marked as "CYANIDE WASTES", located in the IPA Cleaning room;

20 (e) One (1), 30-gallon, opaque, white poly tank marked as "acid" was stored next to  
21 tank #SP-27 containing cyanide wastes located in the IPA Cleaning room;

22 (f) Two (2) opaque white, poly, cylindrical, cyanide waste accumulation tanks, #A  
23 and #B marked as "CYANIDES To N. RECLAIM Rack Strip Tank" and "CYANIDE RINSES  
24 To WWTP";

25 (g) One (1) white poly, rectangular tank, #E, marked as "CYANIDE WASTE  
26 WATER";

27 (h) One (1) opaque white, poly, cylindrical, general rinse waste accumulation tank,  
28 #D, marked as "GENERAL RINSE."

73. Pursuant to Health and Safety Code section 25189(b), defendants are liable for civil penalties according to proof based on this intentional or negligent violation. In the alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health and Safety Code section 25189.2.

### TENTH CAUSE OF ACTION

(Failure to Obtain Assessment by Certified Engineer for  
New Hazardous Waste Treatment Tank)

74. Paragraphs 1 through 27 above are incorporated by reference as though fully set forth herein.

75. In relevant part, California Code of Regulations, title 22, section 66260.10 defines “tank system” as “a hazardous waste transfer, storage or treatment tank and its associated ancillary equipment and containment system.”

76. In relevant part, California Code of Regulations, title 22, section 66260.10 defines “component” as “any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (e.g., a tank or ancillary equipment of a tank system, a pump seal, pump, kiln liner, kiln thermocouple).”

77. In relevant part, California Code of Regulations, title 22, section 66265.192 provides that owners or operators of new tank systems or components shall ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be transferred, stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator shall obtain a written assessment reviewed and certified by an independent, qualified, professional engineer, registered in California attesting that the system has sufficient structural integrity, is acceptable for the transferring, storing and treating of hazardous waste, and that the tanks and containment system are suitably designed to achieve the requirements of this article. This assessment shall be obtained prior to placing the tank system in service, and shall be kept on file at the facility.

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1       78.     Beginning on an undetermined date prior to June 21, 2005 and continuing through  
2 at least June 21, 2005, defendants failed to obtain a written assessment for the following  
3 hazardous waste treatment tanks certified by an independent, qualified engineer registered in  
4 California in violation of California Code of Regulations, title 22, section 66265.192: One (1),  
5 2,500-gallon, opaque white poly, cyanide waste accumulation/batch treatment tank marked as  
6 "Sii," located in a separate part of the wastewater treatment area. The tank was installed in  
7 March 2004.

8       79.     Pursuant to Health and Safety Code section 25189(b), defendants are liable for  
9 civil penalties according to proof based on this intentional or negligent violation. In the  
10 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health  
11 and Safety Code section 25189.2.

12                                   **ELEVENTH CAUSE OF ACTION**

13                                   (Failure to Provide Secondary Containment for

14                                   Hazardous Waste Treatment Tanks Assessed and Certified by Engineer)

15       80.     Paragraphs 1 through 27 above are incorporated by reference as though fully set  
16 forth herein.

17       81.     In relevant part, California Code of Regulations, title 22, section 66260.10 defines  
18 "tank system" as "a hazardous waste transfer, storage or treatment tank and its associated  
19 ancillary equipment and containment system."

20       82.     In relevant part, California Code of Regulations, title 22, section 66260.10 defines  
21 "component" as "any constituent part of a unit or any group of constituent parts of a unit which  
22 are assembled to perform a specific function (e.g., a tank or ancillary equipment of a tank system,  
23 a pump seal, pump, kiln liner, kiln thermocouple)."

24       83.     In relevant part, California Code of Regulations, title 22, section 66265.193(a)  
25 provides that in order to prevent the release of hazardous waste or hazardous constituents to the  
26 environment, secondary containment that meets the requirements of this section shall be provided  
27 for all tank systems or components prior to the tank system or component being put into service.  
28 Section 66265.193(b) provides that secondary containment systems shall be: (1) designed,

1 installed, and operated to prevent any migration of wastes or accumulated liquid out of the  
2 system to the soil, ground water, or surface water at any time during the use of the tank system;  
3 and (2) capable of detecting and collecting releases and accumulated liquids until the collected  
4 material is removed.

5 84. In relevant part, California Code of Regulations, title 22, section 66265.193(e)(1)  
6 provides that "external liner systems shall be: (A) designed or operated to contain 100 percent of  
7 the capacity of the largest tank within its boundary; (B) designed or operated to prevent run-on  
8 and infiltration of precipitation into the secondary containment system unless the collection  
9 system has sufficient excess capacity, in addition to that required in subsection (e)(1)(A) of this  
10 section, to contain run-on and infiltration. Such additional capacity shall be sufficient to contain  
11 run-on and infiltration of precipitation from a 25-year, 24-hour rainfall event; (C) free of cracks  
12 or gaps; and (D) designed and installed to completely surround the tank and to cover all  
13 surrounding earth likely to come into contact with the waste if released from the tank(s) (i.e.,  
14 capable of preventing lateral as well as vertical migration of the waste)."

15 85. In relevant part, California Code of Regulations, title 22, section 66265.193(i)  
16 provides that *tank systems* shall have an annual leak test or an internal inspection or other tank  
17 integrity examination by an independent, qualified, professional engineer, registered in  
18 California, that addresses cracks, leaks, corrosion, and erosion. Section 66265.193(i) also  
19 provides that the owner or operator shall maintain on file at the facility a record of the results of  
20 the assessments conducted in accordance with this regulation.

21 86. In relevant part, California Code of Regulations, title 22, section 66265.193(j)  
22 further provides that secondary containment that meets the requirements of subsections (j)(2) and  
23 (l) shall be provided for tank systems used to manage hazardous wastes generated onsite.

24 87. Beginning on an undetermined date prior to October 16, 2003, and continuing  
25 through at least June 2005, defendants failed to provide secondary containment assessed and  
26 certified by an independent, qualified engineer for the following hazardous waste treatment tanks  
27 in violation of California Code of Regulations, title 22, section 66265.193:

28 ///

1 (a) Three cyanide (3) accumulation tanks, SP-10, SP-12, and SP-14 (85-gallons  
2 each), marked as cyanide wastes in the plating area.

3 (b) One (1), 85-gallon, opaque white, poly, cyanide waste accumulation tank #SP-16,  
4 marked as "CYANIDE WASTE," located in the Acid Cleaning room behind the  
5 eyewash/shower.

6 (c) One (1) opaque white, poly, 200-gallons cyanide waste accumulation tank,  
7 #SP-23, unmarked, in the Manual Plating room.

8 (d) Two (2) opaque white, poly, cyanide waste accumulation tanks, #SP-25, #SP-27  
9 (200 gallons each), marked as "cyanide wastes", located in the IPA Cleaning room.

10 (e) One (1), 30-gallon, opaque, white poly tank marked as "acid" was stored next to  
11 tank #SP-27 containing cyanide wastes.

12 88. Pursuant to Health and Safety Code section 25189(b), defendants are liable for  
13 civil penalties according to proof based on this intentional or negligent violation. In the  
14 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health  
15 and Safety Code section 25189.2.

16 **TWELFTH CAUSE OF ACTION**

17 (Failure to Provide Adequate Secondary Containment for  
18 Hazardous Waste Treatment Tanks Certified by Engineer)

19 89. Paragraphs 1 through 27 above are incorporated by reference as though fully set  
20 forth herein.

21 90. In relevant part, California Code of Regulations, title 22, section 66260.10 defines  
22 "tank system" as "a hazardous waste transfer, storage or treatment tank and its associated  
23 ancillary equipment and containment system."

24 91. In relevant part, California Code of Regulations, title 22, section 66260.10 defines  
25 "component" as "any constituent part of a unit or any group of constituent parts of a unit which  
26 are assembled to perform a specific function (e.g., a tank or ancillary equipment of a tank system,  
27 a pump seal, pump, kiln liner, kiln thermocouple)."

28 ///



1           92.     In relevant part, California Code of Regulations, title 22, section 66265.193(a)  
2 provides that in order to prevent the release of hazardous waste or hazardous constituents to the  
3 environment, secondary containment that meets the requirements of this section shall be provided  
4 for all tank systems or components prior to the tank system or component being put into service.  
5 Section 66265.193(b) provides that secondary containment systems shall be: (1) designed,  
6 installed, and operated to prevent any migration of wastes or accumulated liquid out of the  
7 system to the soil, ground water, or surface water at any time during the use of the tank system;  
8 and (2) capable of detecting and collecting releases and accumulated liquids until the collected  
9 material is removed.

10           93.     In relevant part, California Code of Regulations, title 22, section 66265.193(e)(1)  
11 provides that “external liner systems shall be: (A) designed or operated to contain 100 percent of  
12 the capacity of the largest tank within its boundary; (B) designed or operated to prevent run-on  
13 and infiltration of precipitation into the secondary containment system unless the collection  
14 system has sufficient excess capacity, in addition to that required in subsection (e)(1)(A) of this  
15 section, to contain run-on and infiltration. Such additional capacity shall be sufficient to contain  
16 run-on and infiltration of precipitation from a 25-year, 24-hour rainfall event; (C) free of cracks  
17 or gaps; and (D) designed and installed to completely surround the tank and to cover all  
18 surrounding earth likely to come into contact with the waste if released from the tank(s) (i.e.,  
19 capable of preventing lateral as well as vertical migration of the waste).”

20           94.     In relevant part, California Code of Regulations, title 22, section 66265.193(i)  
21 provides that *tank systems* shall have an annual leak test or an internal inspection or other tank  
22 integrity examination by an independent, qualified, professional engineer, registered in  
23 California, that addresses cracks, leaks, corrosion, and erosion. Section 66265.193(i) also  
24 provides that the owner or operator shall maintain on file at the facility a record of the results of  
25 the assessments conducted in accordance with this regulation.

26           95.     In relevant part, California Code of Regulations, title 22, section 66265.193(j)  
27 further provides that secondary containment that meets the requirements of subsections (j)(2) and  
28 (l) shall be provided for tank systems used to manage hazardous wastes generated onsite.

1           96.     Beginning on an undetermined date prior to June 21, 2005, and continuing  
2 through at least June 21, 2005, defendants failed to provide adequate secondary containment  
3 certified by an independent, qualified engineer for the following hazardous waste treatment tanks  
4 in violation of California Code of Regulations, title 22, section 66265.193:

5           (a)     Two (2), open, 3,000 gallons each, continuous treatment tanks (MOD-14 and  
6 MOD-15) containing cyanide in the wastewater treatment area. The wastewater treatment system  
7 was built in 1975 and these two cyanide treatment tanks were installed in 1995.

8           (b)     One (1), 650-gallon, cyanide waste accumulation and batch treatment tank. The  
9 batch treatment tank had secondary containment with holes and cracks. This tank was later  
10 removed by defendants and replaced with a 2,5000-gallon tank marked as "Sii."

11          (c)     One (1), 2,500-gallon, opaque white poly, cyanide waste accumulation/batch  
12 treatment tank marked as "Sii," located in a separate part of the wastewater treatment area. The  
13 tank replaced the 650-gallon tank referenced above in paragraph 95(b), and was installed in  
14 March 2004. Large holes and cracks were observed in the secondary containment of the cyanide  
15 during the 2003 and 2005 inspections.

16          97.     Pursuant to Health and Safety Code section 25189(b), defendants are liable for  
17 civil penalties according to proof based on this intentional or negligent violation. In the  
18 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health  
19 and Safety Code section 25189.2.

20                               **THIRTEENTH CAUSE OF ACTION**

21           (Failure to Provide Separate Secondary Containment for Incompatible Hazardous Wastes)

22          98.     Paragraphs 1 through 27 above are incorporated by reference as though fully set  
23 forth herein.

24          99.     In relevant part, California Code of Regulations, title 22, section 66260.10 defines  
25 "incompatible waste" as "a hazardous waste which is unsuitable for: (a) placement in a  
26 particular device or facility because it may cause corrosion or decay of containment materials  
27 (e.g., container inner liners or tank walls); or (b) commingling with another waste or material

28     ///

1 under uncontrolled conditions because the commingling might produce heat or pressure, fire or  
2 explosion, violent reaction, toxic dusts, mists, fumes, or gases or flammable fumes or gases.”

3 100. In relevant part, California Code of Regulations, title 22, section 66260.10 defines  
4 “tank system” as “a hazardous waste transfer, storage or treatment tank and its associated  
5 ancillary equipment and containment system.”

6 101. In relevant part, California Code of Regulations, title 22, section 66260.10 defines  
7 “component” as “any constituent part of a unit or any group of constituent parts of a unit which  
8 are assembled to perform a specific function (e.g., a tank or ancillary equipment of a tank system,  
9 a pump seal, pump, kiln liner, kiln thermocouple).”

10 102. In relevant part, California Code of Regulations, title 22, section 66265.193(a)  
11 provides that in order to prevent the release of hazardous waste or hazardous constituents to the  
12 environment, secondary containment that meets the requirements of this section shall be provided  
13 for all tank systems or components prior to the tank system or component being put into service.  
14 Section 66265.193(b) provides that secondary containment systems shall be: (1) designed,  
15 installed, and operated to prevent any migration of wastes or accumulated liquid out of the  
16 system to the soil, ground water, or surface water at any time during the use of the tank system;  
17 and (2) capable of detecting and collecting releases and accumulated liquids until the collected  
18 material is removed. In relevant part, section 66265.193(j) further provides that secondary  
19 containment that meets the requirements of subsections (j)(2) and (l) shall be provided for tank  
20 systems used to manage hazardous wastes generated onsite. Section 66265.193(l) provides that  
21 secondary containment for onground or aboveground generator and onsite tier (Permit-by-Rule  
22 Conditional Authorization, and Conditional Exemption), non-RCRA tank systems or tank  
23 systems otherwise exempt from permitting requirements pursuant to the federal act, shall consist  
24 of any of the devices listed in section 66265.193(d) and satisfy the requirements of section  
25 66265.193(e) or consist of any device or combination of devices as approved in writing by the  
26 CUPA, or the Department if there is no CUPA or the CUPA requests that the Department makes  
27 a determination.

28 ///

1           103. In relevant part, California Code of Regulations, title 22, section 66265.194(d)  
2 provides that “[t]ransfer, treatment or storage of hazardous waste in tanks shall comply with  
3 section 66265.17(b).”

4           104. California Code of Regulations, title 22, section 66265.199 provides that “(a)  
5 Incompatible wastes, or incompatible waste and materials, shall not be placed in the same tank  
6 system, unless section 66265.17(b) is complied with. (b) Hazardous waste shall not be placed in  
7 a tank system that has not been decontaminated and that previously held an incompatible waste  
8 or material, unless section 66265.17(b) is complied with.”

9           105. In relevant part, California Code of Regulations, title 22, section 66265.17(b)  
10 provides that “the transfer, treatment, storage, or disposal of ignitable or reactive waste, and the  
11 mixture or commingling of incompatible wastes, or incompatible wastes and materials, shall be  
12 conducted so that it does not: (1) generate extreme heat or pressure, fire or explosion, or violent  
13 reaction; (2) produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to  
14 threaten human health or the environment; (3) produce uncontrolled flammable fumes or gases in  
15 sufficient quantities to pose a risk of fire or explosions; (4) damage the structural integrity of the  
16 device or facility containing the waste; or (5) through other like means threaten human health or  
17 the environment.”

18           106. Beginning on an undetermined date prior to June 21, 2005, and continuing  
19 through at least June 21, 2005, defendants failed to provide separate secondary containment for  
20 the following tanks holding incompatible corrosive ( $\text{pH} \leq 2$  or  $\geq 12.5$ ) waste and cyanide-bearing  
21 hazardous wastes in violation of California Code of Regulations, title 22, sections 66265.193,  
22 66265.194(d), 66265.199, and 66265.17(b): Four (4) tanks marked “A,” “B,” “D,” and “E,”  
23 varying in size between 500 and 1,000 gallons, tanks “A,” “B,” and “E” contained cyanide  
24 wastes, and tank “D” contained corrosive waste. These tanks were located within the same  
25 containment area. In addition, a pipe carrying hydrochloric acid, which is incompatible with the  
26 cyanides wastes contained in tanks “A,” “B,” and “E,” passed though the same containment area.  
27 Defendants maintained only one secondary containment system for its tank system and  
28 ///

1 component parts holding incompatible wastes which, in the event of tank failure, could  
2 potentially mix in the secondary containment and generate toxic hydrogen cyanide gas.

3 107. Pursuant to Health and Safety Code section 25189(b), Defendants are liable for  
4 civil penalties according to proof based on this intentional or negligent violation. In the  
5 alternative, Defendants are strictly liable for civil penalties according to proof pursuant to Health  
6 and Safety Code section 25189.2.

7 **FOURTEENTH CAUSE OF ACTION**

8 (Failure to Conduct Inspections of Hazardous Waste Tanks  
9 and Maintain Appropriate Documentation)

10 108. Paragraphs 1 through 27 above are incorporated by reference as though fully set  
11 forth herein.

12 109. In relevant part, California Code of Regulations, title 22, section  
13 66262.34(a)(1)(A) provides that a generator may accumulate hazardous waste on-site for 90 days  
14 or less without a permit or grant of interim status, provided that the waste is placed in tanks and  
15 the generator complies with article 10 (Tank Systems) of chapter 15.

16 110. California Code of Regulations, title 22, section 66265.195(a) provides “[t]he  
17 owner or operator shall inspect, where present, at least once each operating day: (1) overfill/spill  
18 control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to  
19 ensure that it is in good working order; (2) the aboveground portions of the tank system, if any, to  
20 detect corrosion or releases of waste; (3) data gathered from monitoring equipment and  
21 leak-detection equipment, (e.g., pressure and temperature gauges, monitoring wells) to ensure  
22 that the tank system is being operated according to its design; (4) the construction materials and  
23 the area immediately surrounding the externally accessible portion of the tank system including  
24 secondary containment structures (e.g., dikes) to detect erosion or signs of releases of hazardous  
25 waste (e.g., wet spots, dead vegetation); and (5) for uncovered tanks, the level of waste in the  
26 tank, to ensure compliance with section 66265.194(b)(3).” Section 66265.195(c) further  
27 provides that “[t]he owner or operator shall document in the operating record of the facility an  
28 inspection of those items in subsections (a) and (b) of this section.”

1           111. Beginning on an undetermined date prior to June 21, 2005, and continuing  
2 through at least June 21, 2005, defendants failed to conduct daily inspections of the following  
3 hazardous waste tanks and maintain records of the inspections at the Facility in violation of  
4 California Code of Regulations, title 22, section 66265.195:

5           (a) Three (3) cyanide waste accumulation tanks, "SP-10," "SP-12," and "SP-14,"  
6 marked as cyanide wastes in the plating area.

7           (b) One (1), 2,500-gallon, opaque white poly, cyanide waste accumulation/batch  
8 treatment tank marked as "Sii," located in the wastewater treatment area. This tank was installed  
9 in March 2004.

10          (c) One (1) opaque white, poly, cyanide waste accumulation tank, "SP-16"  
11 (85-gallons), marked as CYANIDE WASTE, located in the Acid Cleaning room behind the  
12 eyewash/shower.

13          (d) One (1) opaque white, poly, 200-gallons cyanide waste accumulation tank,  
14 "SP-23," unmarked, in the Manual Plating room.

15          (e) Two (2) opaque white, poly, cyanide waste accumulation tanks, "SP-25," and  
16 "SP-27," marked as "cyanide wastes", located in the IPA Cleaning room.

17          (f) One (1), 30-gallon, opaque, white poly tank marked as "acid" was stored next to  
18 tank "SP-27" containing cyanide wastes.

19          (g) Two (2) opaque white, poly, cylindrical, cyanide waste accumulation tanks, "A"  
20 and "B," marked as "CYANIDE To N. RECLAIM Rack Strip Tank", "CYANIDE RINSE To  
21 WWTP," "CYANIDE RINSE."

22          (h) One (1) white, poly, rectangular tank, "E," marked as "CYANIDE WASTE  
23 WATER."

24          (i) One (1) opaque white, poly, cylindrical, general rinse waste accumulation tank  
25 "D," marked as "GENERAL RINSE."

26           112. Pursuant to Health and Safety Code section 25189(b), defendants are liable for  
27 civil penalties according to proof based on this intentional or negligent violation. In the

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1 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health  
2 and Safety Code section 25189.2.

3 **FIFTEENTH CAUSE OF ACTION**

4 (Failure to Have Written Inspection Schedule for

5 All Generator Areas Within the Facility)

6 113. Paragraphs 1 through 27 above are incorporated by reference as though fully set  
7 forth herein.

8 114. In relevant part, California Code of Regulations, title 22, section 66262.34(a)(4)  
9 provides that generators who accumulate hazardous waste in tanks stored on site without a permit  
10 or grant of interim status shall comply with the specified requirements contained in chapter 15.

11 115. In relevant part, California Code of Regulations, title 22, section 66265.15(a)  
12 provides that the "owner or operator shall inspect the facility for malfunctions and deterioration,  
13 operator errors, and discharges which may be causing or may lead to: (1) release of hazardous  
14 waste constituents to the environment; or (2) a threat to human health. The owner or operator  
15 shall conduct these inspections often enough to identify problems in time to correct them before  
16 they harm human health or the environment." Section 66265.15(b) further provides that "(1) the  
17 owner or operator shall develop and follow a written schedule for inspecting all monitoring  
18 equipment, safety and emergency equipment, security devices, and operating and structural  
19 equipment (such as dikes and sump pumps) that are important to preventing, detecting, or  
20 responding to environmental or human health hazards. (2) The owner or operator shall keep this  
21 schedule at the facility. (3) The schedule shall identify the types of problems (e.g., malfunctions  
22 or deterioration) which are to be looked for during the inspection (e.g., inoperative sump pump,  
23 leaking fitting, eroding dike, etc.)." Section 66265.15(d) provides that the "owner or operator  
24 shall record inspections in an inspection log or summary. The owner or operator shall keep these  
25 records for at least three years from the date of inspection. At a minimum, these records shall  
26 include the date and time of the inspection, the name of the inspector, a notation of the  
27 observations made, and the date and nature of any repairs or other remedial actions."

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116. Beginning on an undetermined date prior to October 16, 2003, and continuing through at least June 2005, defendants failed to maintain a written inspection schedule for the following hazardous waste management areas at the Facility in violation of California Code of Regulations, title 22, sections 66262.34 and 66265.15: Manual Plating room and the gold recovery room/stripping room, also known as the "North Reclaim room."

117. Pursuant to Health and Safety Code section 25189(b), defendants are liable for civil penalties according to proof based on this intentional or negligent violation. In the alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health and Safety Code section 25189.2.

## SIXTEENTH CAUSE OF ACTION

(Failure to Provide Separate Secondary Containment for Incompatible Hazardous Wastes)

118. Paragraphs 1 through 27 above are incorporated by reference as though fully set forth herein.

119. In relevant part, California Code of Regulations, title 22, section 66260.10 defines “incompatible waste” as “a hazardous waste which is unsuitable for: (a) placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or (b) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases or flammable fumes or gases.”

120. In relevant part, California Code of Regulations, title 22, section 66260.10 defines “tank system” as “a hazardous waste transfer, storage or treatment tank and its associated ancillary equipment and containment system.”

121. In relevant part, California Code of Regulations, title 22, section 66260.10 defines “component” as “any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (e.g., a tank or ancillary equipment of a tank system, a pump seal, pump, kiln liner, kiln thermocouple).”

122. In relevant part, California Code of Regulations, title 22, section 66265.193(a) provides that in order to prevent the release of hazardous waste or hazardous constituents to the



1 environment, secondary containment that meets the requirements of this section shall be provided  
2 for all tank systems or components prior to the tank system or component being put into service.  
3 Section 66265.193(b) provides that secondary containment systems shall be: (1) designed,  
4 installed, and operated to prevent any migration of wastes or accumulated liquid out of the  
5 system to the soil, ground water, or surface water at any time during the use of the tank system;  
6 and (2) capable of detecting and collecting releases and accumulated liquids until the collected  
7 material is removed. In relevant part, section 66265.193(j) further provides that secondary  
8 containment that meets the requirements of subsections (j)(2) and (l) shall be provided for tank  
9 systems used to manage hazardous wastes generated onsite. Section 66265.193(l) provides that  
10 secondary containment for onground or aboveground generator and onsite tier (Permit-by-Rule  
11 Conditional Authorization, and Conditional Exemption), non-RCRA tank systems or tank  
12 systems otherwise exempt from permitting requirements pursuant to the federal act, shall consist  
13 of any of the devices listed in section 66265.193(d) and satisfy the requirements of section  
14 66265.193(e) or consist of any device or combination of devices as approved in writing by the  
15 CUPA, or the Department if there is no CUPA or the CUPA requests that the Department makes  
16 a determination.

17 123. In relevant part, California Code of Regulations, title 22, section 66265.194(d)  
18 provides that “[t]ransfer, treatment or storage of hazardous waste in tanks shall comply with  
19 section 66265.17(b).”

20 124. California Code of Regulations, title 22, section 66265.199 provides that “(a)  
21 Incompatible wastes, or incompatible waste and materials, shall not be placed in the same tank  
22 system, unless section 66265.17(b) is complied with. (b) Hazardous waste shall not be placed in  
23 a tank system that has not been decontaminated and that previously held an incompatible waste  
24 or material, unless section 66265.17(b) is complied with.”

25 125. In relevant part, California Code of Regulations, title 22, section 66265.17(b)  
26 provides that “the transfer, treatment, storage, or disposal of ignitable or reactive waste, and the  
27 mixture or commingling of incompatible wastes, or incompatible wastes and materials, shall be  
28 conducted so that it does not: (1) generate extreme heat or pressure, fire or explosion, or violent

1 reaction; (2) produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to  
2 threaten human health or the environment; (3) produce uncontrolled flammable fumes or gases in  
3 sufficient quantities to pose a risk of fire or explosions; (4) damage the structural integrity of the  
4 device or facility containing the waste; or (5) through other like means threaten human health or  
5 the environment.”

6 126. Beginning on an undetermined date prior to June 21, 2005, and continuing  
7 through at least June 21, 2005, defendants failed to provide separate secondary containment for  
8 the following tanks holding incompatible corrosive ( $\text{pH} \leq 2$  or  $\geq 12.5$ ) waste and cyanide-bearing  
9 hazardous wastes in violation of California Code of Regulations, title 22, sections 66265.193,  
10 66265.194(d), 66265.198, 66265.199, and 66265.17(b):

11 (a) Two (2) open 3,000-gallon tanks, “MOD-14” and “MOD- 15”, containing cyanide  
12 wastes, were located next to one (1) open 650-gallon tank, MOD-12, containing corrosive waste  
13 with nickel, and one (1) open tank, “MOD-5”, containing cyanide waste.

14 (b) One (1), 30-gallon, opaque, white poly tank marked “acid” was stored next to tank  
15 “SP-27” containing cyanide wastes.

16 (c) Two (2) opaque white, poly, cylindrical, cyanide waste accumulation tanks, “A”  
17 and “B,” marked as “CYANIDE To N. RECLAIM Rack Strip Tank” , “CYANIDE RINSE To  
18 WWTP,” “CYANIDE RINSE.”

19 (d) One (1) white, poly, rectangular tank, “E,” marked as “CYANIDE WASTE  
20 WATER.”

21 (e) One (1) opaque white, poly, cylindrical, general rinse waste accumulation tank  
22 “D,” marked as “GENERAL RINSE.”

23 (f) A pipe carrying hydrochloric acid also passed though the same containment area.

24 127. Defendants maintained only one secondary containment system for these tank  
25 systems and component parts holding incompatible and/or reactive wastes which, in the event of  
26 tank failure, could potentially mix in the secondary containment and generate toxic hydrogen  
27 cyanide gas.

28 128. Pursuant to Health and Safety Code section 25189(b), Defendants are liable for

1 civil penalties according to proof based on this intentional or negligent violation. In the  
2 alternative, Defendants are strictly liable for civil penalties according to proof pursuant to Health  
3 and Safety Code section 25189.2.

4 **SEVENTEENTH CAUSE OF ACTION**

5 (Failure to Maintain At Least 2 Feet of Freeboard for Hazardous Waste Tanks)

6 129. Paragraphs 1 through 27 above are incorporated by reference as though fully set  
7 forth herein.

8 130. In relevant part, California Code of Regulations, title 22, section  
9 66262.34(a)(1)(A) provides that generators who accumulate hazardous waste in tanks stored on  
10 site without a permit or grant of interim status shall comply with article 10 of chapter 15,  
11 including California Code of Regulations, title 22, section 66265.194.

12 131. In relevant part, California Code of Regulations, title 22, section 66265.194(b)(3)  
13 provides that an owner or operator shall use appropriate controls and practices to prevent spills  
14 and overflows from tanks or secondary containment systems. At a minimum, an owner or  
15 operator is required to maintain sufficient freeboard (at least two feet) in uncovered tanks to  
16 prevent overtopping by wave or wind action or by precipitation, unless the tank is equipped with  
17 a containment structure (e.g., dike or trench), a drainage control system or a diversion structure  
18 (e.g., standby tank) with a capacity that equals or exceeds the volume of the top 60 centimeters (2  
19 feet) of the tank.

20 132. Beginning on an undetermined date prior to prior to October 16, 2003, and  
21 continuing through at least June 21, 2005, defendants failed to maintain sufficient freeboard (at  
22 least two feet) in approximately eleven (11) hazardous waste tanks that were uncovered and  
23 located in an outside area of the Facility in violation of California Code of Regulations, title 22,  
24 section 66265.194(b)(3).

25 133. Pursuant to Health and Safety Code section 25189(b), Defendants are liable for  
26 civil penalties according to proof based on this intentional or negligent violation. In the  
27 alternative, Defendants are strictly liable for civil penalties according to proof pursuant to Health  
28 and Safety Code section 25189.2.

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**EIGHTEENTH CAUSE OF ACTION**

(Failure to Appropriately Manage Empty Hazardous Waste Containers)

134. Paragraphs 1 through 27 above are incorporated by reference as though fully set forth herein.

135. In relevant part, California Code of Regulations, title 22, section 66261.7(f) provides that a container larger than five gallons in capacity which previously held hazardous materials, including hazardous waste, shall be marked with the date it has been emptied and shall be managed in accordance with section 66261.7(e) within one year of being emptied.

136. Beginning on or about July 25, 2003, and continuing through at least March 4, 2004, defendants failed to appropriately manage one (1) 55-gallon empty container that previously contained hazardous material (ethylene glycol). The container was marked with a date emptied “7/25/02,” and was stored in the Facility’s Chem pad area for a period greater than one year.

137. Pursuant to Health and Safety Code section 25189(b), Defendants are liable for civil penalties according to proof based on this intentional or negligent violation. In the alternative, Defendants are strictly liable for civil penalties according to proof pursuant to Health and Safety Code section 25189.2.

**NINETEENTH CAUSE OF ACTION**

(Failure to Maintain and Operate Facility to Minimize Hazardous Waste Releases)

138. Paragraphs 1 through 27 above are incorporated by reference as though fully set forth herein.

139. In relevant part, California Code of Regulations, title 22, section 66262.34(a)(4) provides that generators who accumulate hazardous waste in tanks stored on site without a permit or grant of interim status shall comply with the requirements for owners or operators in articles 3 and 4 of chapter 15, including California Code of Regulations, title 22, section 66265.35.

140. California Code of Regulations, title 22, section 66265.35 provides that the “owner or operator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of

1 facility operation in an emergency, unless it can be demonstrated to the Department that aisle  
2 space is not needed for any of these purposes.”

3 141. Beginning on an undetermined date prior to October 16, 2003, and continuing  
4 through at least October 24, 2003, defendants failed to maintain appropriate aisle space to allow  
5 unobstructed movement of personnel, fire protection equipment, spill control equipment, and  
6 decontamination equipment for the hazardous waste containers that were located in the Facility’s  
7 Chem Pad waste storage areas, in violation of sections 66262.34 and 66265.35.

8 142. Pursuant to Health and Safety Code section 25189(b), defendants are liable for  
9 civil penalties according to proof based on this intentional or negligent violation. In the  
10 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health  
11 and Safety Code section 25189.2.

## 12 **TWENTIETH CAUSE OF ACTION**

13 (Failure to Comply with Hazardous Waste Exemption Requirements)

14 143. Paragraphs 1 through 27 above are incorporated by reference as though fully set  
15 forth herein.

16 144. In relevant part, California Code of Regulations, title 22, section 66261.2(g)  
17 provides that defendants involved in actions to enforce HWCL regulations who claim that a  
18 certain material is not a waste or is conditionally exempt from regulation, must demonstrate that  
19 there is a known market or disposition for the material, and that they meet the terms of the  
20 exclusion or exemption. Section 66261.2(g) further provides that defendants must provide  
21 appropriate documentation (such as contracts showing that a second person uses the material as  
22 an ingredient in a production process) to demonstrate that the material is not a waste, or is  
23 exempt from regulation.

24 145. In relevant part, Health and Safety Code section 25143.2(f) provides that  
25 “[a]ny person who manages a recyclable material under a claim that the material qualifies for  
26 exclusion or exemption pursuant to this section shall provide, upon request, to the department,  
27 the California Environmental Protection Agency, or any local agency or official authorized to  
28 bring an action as provided in Section 25180, all of the following information: (A) The name,

1 street and mailing address, and telephone number of the owner or operator of any facility that  
2 manages the material. (B) Any other information related to the management by that person of the  
3 material requested by the department, the California Environmental Protection Agency, or the  
4 authorized local agency or official. (2) Any person claiming an exclusion or an exemption  
5 pursuant to this section shall maintain adequate records to demonstrate to the satisfaction of the  
6 requesting agency or official that there is a known market or disposition for the material, and that  
7 the requirements of any exemption or exclusion pursuant to this section are met.”

8 146. Beginning on an undetermined date prior to October 16, 2003, and continuing  
9 through at least June 28, 2005, defendants violated California Code of Regulations, title 22,  
10 section 66261.2(g) and Health and Safety Code section 25143.2(f) by failing to:

11 (a) Demonstrate that one (1) 275-gallon tank of methanol and two (2) 275-gallon  
12 tanks of Isopropyl Alcohol (IPA) were used as an ingredient in the manufacture of windshield  
13 wiper fluid and window cleaner and therefore exempt as hazardous waste pursuant to Health and  
14 Safety Code section 25143.2(b);

15 (b) Demonstrate that there was a known market or disposition for the above-  
16 referenced methanol and IPA; and

17 (c) Provide documentation (such as contracts showing that a second person  
18 uses the material as an ingredient in a production process) to demonstrate that the methanol and  
19 IPA materials are not wastes, or are exempt from regulation.

20 147. Pursuant to Health and Safety Code section 25189(b), defendants are liable for  
21 civil penalties according to proof based on this intentional or negligent violation. In the  
22 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health  
23 and Safety Code section 25189.2.

## 24 **TWENTY-FIRST CAUSE OF ACTION**

25 (Falsification of Documents)

26 148. Paragraphs 1 through 27 above are incorporated by reference as though fully set  
27 forth herein.

28 149. In relevant part, Health and Safety Code section 25189.2(a) provides that “[a]ny

1 person who makes any false statement or representation in any application, label, manifest,  
2 record, report, permit, or other document, filed, maintained, or used for purposes of compliance  
3 with this chapter (HWCL), is liable for a civil penalty not to exceed twenty-five thousand dollars  
4 (\$25,000) for each separate violation or, for continuing violations, for each day that the violation  
5 continues.

6 150. During the October 2003 and June 21, 2005 Facility inspections by the  
7 Department, defendants falsified the following documents in violation of Health and Safety Code  
8 section 25189.2(a):

9 (a) Monthly inspection logs (for the month of May 2005) were falsified to show  
10 compliance with monthly inspection requirements for the Facility's emergency equipment.  
11 Specifically, defendants falsified documents to show that they had inspected eyewash/showers  
12 and fire extinguishers in May 2005 when in fact that emergency equipment was not inspected in  
13 May 2005.

14 (b) During the October 2003 and June 2005 Facility inspections, Facility process  
15 flowcharts were presented to the Department's representative which purportedly reflected current  
16 and accurate manufacturing process activities at the Facility. In fact, the process flowcharts  
17 failed to include and identify waste accumulation areas (IPA cleaning room) and hazardous waste  
18 tanks, including tanks containing cyanide wastes.

19 151. Pursuant to Health and Safety Code section 25189(b), defendants are liable for  
20 civil penalties according to proof based on this intentional or negligent violation. In the  
21 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health  
22 and Safety Code section 25189.2.

### 23 **TWENTY-SECOND CAUSE OF ACTION**

24 (Failure to Properly Label Hazardous Waste Containers as "Hazardous Waste")

25 152. Paragraphs 1 through 27 are incorporated by reference herein as though fully set  
26 forth herein.

27 153. In relevant part, California Code of Regulations, title 22, section 66262.34(a)  
28 provides that a generator may accumulate hazardous waste on-site for 90 days or less without a

1 permit or grant of interim status, provided that: . . . (2) the date upon which each period of  
2 accumulation begins is clearly marked and visible for inspection on each container; and  
3 (3) the generator complies with the requirements of subsection (f) of this section; and  
4 (4) the generator complies with the requirements for owners or operators in articles 3 and 4 of  
5 chapter 15 of this division and with section 66265.16, and with section 66268.7(a)(5).

6 154. In relevant part, California Code of Regulations, title 22, section 66262.34(f)  
7 provides that generators who accumulate hazardous waste on site without a permit or grant of  
8 interim status shall comply with the Department's labeling requirements as set forth in said  
9 regulation. Section 66262.34(f) further provides that generators who accumulate hazardous  
10 waste on site without a permit or grant of interim status shall comply with the following  
11 requirements: (1) the date upon which each period of accumulation begins shall be clearly  
12 marked and visible for inspection on each container and portable tank; (2) the date the applicable  
13 accumulation period specified in subsection (a) or (d) of this section begins, for purposes of  
14 subsections (a) and (b) of this section, shall be clearly marked and visible for inspection on each  
15 container and tank; and (3) each container and tank used for onsite accumulation of hazardous  
16 waste shall be labeled or marked clearly with the words, "Hazardous Waste." Additionally, all  
17 containers and portable tanks shall be labeled with the following information: (A) composition  
18 and physical state of the wastes; (B) statement or statements which call attention to the particular  
19 hazardous properties of the waste (e.g., flammable, reactive, etc.); (C) name and address of the  
20 person producing the waste.

21 155. Beginning on an undetermined date prior to June 21, 2005, and continuing  
22 through at least June 21, 2005, defendants failed to properly label the following hazardous waste  
23 containers and tanks with the words "hazardous waste" and failed to identify on the labels the  
24 hazardous properties and composition of the wastes, and failed to identify the initial date of  
25 accumulation, in violation of California Code of Regulations, title 22, section 66262.34(a) and  
26 (f):

27 (a) Cyanide batch treatment tank Sii, and tanks TA-4, TA-9, TA-11, TA-12, MOD-2,  
28 MOD-3, MOD-4, MOD-5, MOD-9, MOD-12, MOD-13, MOD-14, MOD-15.



156. Pursuant to Health and Safety Code section 25189(b), defendants are liable for civil penalties according to proof based on this intentional or negligent violation. In the alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health and Safety Code section 25189.2.

**TWENTY-THIRD CAUSE OF ACTION**

(Failure to Properly Inspect and Maintain Emergency Equipment”)

157. Paragraphs 1 through 27 are incorporated by reference herein as though fully set forth herein.

158. In relevant part, California Code of Regulations, title 22, section 66262.34(a)(4) provides that generators who accumulate hazardous waste in tanks stored on site without a permit or grant of interim status shall comply with the requirements for owners or operators in articles 3 and 4 of chapter 15.

159. In relevant part, California Code of Regulations, title 22, section 66265.15(b) provides that the owner or operator of a facility shall develop and follow a written schedule for inspecting all safety and emergency equipment that are important to preventing, detecting, or responding to environmental or human health hazards.

160. California Code of Regulations, title 22, section 66265.33 provides that “[a]ll facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.”

161. California Code of Regulations, title 22, section 66265.35 provides that “[t]he owner or operator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless it can be demonstrated to the Department that aisle space is not needed for any of these purposes.”

162. Beginning on an undetermined date prior to June 21, 2005, and continuing through at least June 21, 2005, defendants failed to inspect fourteen (14) eyewash/showers (100%) and approximately sixty (60) fire extinguishers (50%) on a monthly basis, in violation of

1 California Code of Regulations, title 22, sections 66262.34(a)(4), 66265.15(b) and 66265.33. In  
2 addition, defendants failed to provide access to the eyewash/shower located in the Facility's  
3 North Reclaim room, in violation of California Code of Regulations, title 22, sections  
4 66262.34(a)(4) and 66265.35.

5 163. Pursuant to Health and Safety Code section 25189(b), defendants are liable for  
6 civil penalties according to proof based on this intentional or negligent violation. In the  
7 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health  
8 and Safety Code section 25189.2.

9 **TWENTY-FOURTH CAUSE OF ACTION**

10 (Failure to Comply with Tank Closure Requirements)

11 164. Paragraphs 1 through 27 are incorporated by reference herein as though fully set  
12 forth herein.

13 165. In relevant part, California Code of Regulations, title 22, section 67383.3 provides  
14 that any tank that is identified as a hazardous waste and that is destined to be disposed, reclaimed  
15 or closed in place, shall be managed in accordance with all of the requirements of section  
16 67383.3, including, but not limited to, obtaining a tank closure certificate by an appropriate  
17 certified or registered professional.

18 166. In or about March 2004, and continuing through at least October 20, 2005,  
19 defendants replaced a hazardous waste cyanide batch treatment tank and failed to comply with  
20 tank closure requirements, including failing to obtain a certificate of closure signed by a certified  
21 or licensed professional, in violation of California Code of Regulations, title 22, section 67383.3.  
22 Defendants replaced the cyanide batch treatment tank with a new 2500-gallon tank in March  
23 2004.

24 167. Pursuant to Health and Safety Code section 25189(b), defendants are liable for  
25 civil penalties according to proof based on this intentional or negligent violation. In the  
26 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health  
27 and Safety Code section 25189.2.

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1 **TWENTY-FIFTH CAUSE OF ACTION**

2 (Failure to Properly Close Hazardous Waste Containers)

3 168. Paragraphs 1 through 27 are incorporated by reference herein as though fully set  
4 forth herein.

5 169. In relevant part, California Code of Regulations, title 22, section 66262.34(a)(4)  
6 provides that generators who accumulate hazardous waste in tanks stored on site without a permit  
7 or grant of interim status shall comply with the requirements for owners or operators in article 9  
8 of chapter 15.

9 170. California Code of Regulations, title 22, section 66265.173 provides that "(a) a  
10 container holding hazardous waste shall always be closed during transfer and storage, except  
11 when it is necessary to add or remove waste. (b) A container holding hazardous waste shall not  
12 be opened, handled, transferred or stored in a manner which may rupture the container or cause it  
13 to leak. Reuse of containers for transportation shall comply with the requirements of the U.S.  
14 Department of Transportation regulations including those set forth in 49 CFR section 173.28."

15 171. Beginning on an undetermined date prior to June 21, 2005, and continuing  
16 through at least June 21, 2005, defendants failed to properly keep closed the following containers  
17 containing hazardous waste in violation of California Code of Regulations, title 22, sections  
18 66262.34(a) and 66265.173:

19 (a) Two (2), open and unlabeled, 5-gallon containers that contained a dark brown  
20 hazardous waste (cyanide liquid and sludge).

21 172. Pursuant to Health and Safety Code section 25189(b), defendants are liable for  
22 civil penalties according to proof based on this intentional or negligent violation. In the  
23 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health  
24 and Safety Code section 25189.2.

25 **TWENTY-SIXTH CAUSE OF ACTION**

26 (Failure to Maintain Appropriate Employee Training Documentation)

27 173. Paragraphs 1 through 27 are incorporated by reference herein as though fully set  
28 forth herein.

1           174. In relevant part, California Code of Regulations, title 22, section 66262.34(a)(4)  
2 provides that generators who accumulate hazardous waste in tanks stored on site without a permit  
3 or grant of interim status shall comply with the requirements section 66265.16 of chapter 15.

4           175. In relevant part, California Code of Regulations, title 22, section 66265.16(a)  
5 provides that “(1) facility personnel shall successfully complete a program of classroom  
6 instruction or on-the-job training that teaches them to perform their duties in a way that ensures  
7 the facility's compliance with the requirements of this chapter. The owner or operator shall  
8 ensure that this program includes all the elements described in the document required under  
9 subsection (d)(3) of this section. (2) This program shall be directed by a person trained in  
10 hazardous waste management procedures, and shall include instruction which teaches facility  
11 personnel hazardous waste management procedures (including contingency plan implementation)  
12 relevant to the positions in which they are employed. (3) At a minimum, the training program  
13 shall be designed to ensure that facility personnel are able to respond effectively to emergencies  
14 by familiarizing them with emergency procedures, emergency equipment, and emergency  
15 systems. . .” Section 66265.16, subdivisions (b) through (e), further provide that facility  
16 personnel shall complete such required training within specified time limits and that the owner or  
17 operator shall maintain appropriate written documentation of such training as set forth in said  
18 regulation.

19           176. Beginning on an undetermined date prior to June 21, 2005, and continuing  
20 through at least August 1, 2005, defendants failed to have adequate written training  
21 documents specific to the job for employees handling hazardous waste at the Facility, in violation  
22 of California Code of Regulations, title 22, sections 66262.34(a)(4) and 66265.16.

23           177. Pursuant to Health and Safety Code section 25189(b), defendants are liable for  
24 civil penalties according to proof based on this intentional or negligent violation. In the  
25 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health  
26 and Safety Code section 25189.2.

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1 **TWENTY-SEVENTH CAUSE OF ACTION**

2 (Failure to Maintain and Operate Facility to Minimize Hazardous Waste Releases)

3 178. Paragraphs 1 through 27 are incorporated by reference herein as though fully set  
4 forth herein.

5 179. In relevant part, California Code of Regulations, title 22, section 66262.34(a)(4)  
6 provides that generators who accumulate hazardous waste in tanks stored on site without a permit  
7 or grant of interim status shall comply with the requirements for owners or operators in article 3  
8 of chapter 15.

9 180. California Code of Regulations, title 22, section 66265.31 provides that  
10 “[f]acilities shall be maintained and operated to minimize the possibility of a fire, explosion, or  
11 any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents  
12 to air, soil, or surface water which could threaten human health or the environment.”

13 181. Beginning on an undetermined date prior to June 21, 2005, and continuing  
14 through at least June 21, 2005, defendants failed to properly maintain and operate the Facility in  
15 order to minimize hazardous waste and/or hazardous waste constituent releases into the  
16 environment, in violation of California Code of Regulations, title 22, sections 66262.34(a)(4) and  
17 66265.31. At the time of the Facility inspections, the Department’s representatives observed the  
18 following:

19 (a) A release of white liquid from the fenced in cyanide batch treatment area. The  
20 white liquid was later identified as bleach that had been spilled on the floor.

21 (b) In the IPA Cleaning room, a release of an unknown material was observed on the  
22 floor. The spilled material was later identified as residue from the Facility’s final rinse process.

23 182. Pursuant to Health and Safety Code section 25189(b), defendants are liable for  
24 civil penalties according to proof based on this intentional or negligent violation. In the  
25 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health  
26 and Safety Code section 25189.2.

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**TWENTY-EIGHT CAUSE OF ACTION**

(Failure to Maintain an Adequate Written Contingency Plan)

183. Paragraphs 1 through 27 above are incorporated by reference as though fully set forth herein.

184. In relevant part, California Code of Regulations, title 22, section 66262.34(a)(4) provides that generators who accumulate hazardous waste in tanks stored on site without a permit or grant of interim status shall comply with the requirements for owners or operators in article 4 of chapter 15.

185. In relevant part, California Code of Regulations, title 22, section 66265.51 provides that an owner or operator shall have a contingency plan for the facility which is designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

186. In relevant part, California Code of Regulations, title 22, section 66265.52(a) provides that the contingency plan shall describe the actions facility personnel shall take in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility. California Code of Regulations, title 22, section 66265.52(c) further provides that the plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services. And California Code of Regulations, title 22, section 66265.52(e) also provides that the "plan shall include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities."

187. Beginning on an undetermined date prior to June 21, 2005, and continuing through at least July 20, 2005, defendants failed to maintain and provide to the Department an

1 appropriate contingency plan that properly addressed sudden or unplanned releases of hazardous  
2 wastes or constituents in violation of California Code of Regulations, title 22, sections  
3 66262.34(a)(4), 66265.51 and 66265.52. A copy of the Contingency Plan was provided to the  
4 Department on August 1, 2005, and that plant was missing marked evacuation routes for the  
5 Facility.

6 188. Pursuant to Health and Safety Code section 25189(b), defendants are liable for  
7 civil penalties according to proof based on this intentional or negligent violation. In the  
8 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health  
9 and Safety Code section 25189.2.

10 **WHEREFORE**, Plaintiff prays that the Court grant the following relief:

11 A. Enter a judgment that defendants and DOES 1-10 are required to pay civil  
12 penalties to Plaintiff according to proof pursuant to the First through Twenty-Eighth Causes of  
13 Action;

14 B. Enter preliminary injunctions, permanent injunctions, or other orders requiring  
15 defendants and DOES 1-10 to comply with the applicable permits, the HWCL and/or the  
16 regulations adopted thereunder;

17 C. Grant Plaintiff its costs of investigation;

18 D. Grant Plaintiff its costs of suit herein; and

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1 E. Grant such other and further relief as the Court deems just and proper.

2 Dated: September 13, 2007

3 Respectfully submitted,

4 EDMUND G. BROWN JR., Attorney General  
TOM GREENE,

5 Chief Assistant Attorney General  
THEODORA BERGER,

6 Senior Assistant Attorney General  
TIMOTHY R. PATTERSON

7 Supervising Deputy Attorney General  
EDWARD H. OCHOA

8 Deputy Attorney General  
California Department of Justice

9  
10 By 

11 EDWARD H. OCHOA  
12 Deputy Attorney General

13 Attorneys for Plaintiff, People of the  
14 State of California, ex rel. Maureen F.  
Gorsen, Director, California Department  
15 of Toxic Substances Control  
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